United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ORIGINAL

75-1107

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

-v-

ANGELO BERTOLOTTI, et al.,

Appellants.

On Appeal From The United States District Court
For The Southern District Of New York

BRIEF FOR THE APPELLANT
JAMES CAPOTORTO

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QUESTIONS PRESENTED

1. Whether the Court erred in failing to sever the Appellant Capotorto because of the prejudice to him from the variance between the single conspiracy pleaded and the multiple conspiracies proved.

2. Whether the evidence before the Grand Jury was sufficient to indict the Appellant Capotorto for the conspiracy charged in Count One of the indictment.

3. Whether the Court erred in failing to charge that the jury had to find that the Appellant Capotorto had actual knowledge of the scope of the conspiracy.

4. Whether the Court erred in receiving into evidence a lost and found report for the truth contained therein.

5. Whether the Court erred in admitting into evidence the business records of the Shell Oil Company.

STATEMENT PURSUANT TO RULE 28(3)

Preliminary Statement

The Appellant James Capotorto appeals from a judgment, rendered March 4, 1975, convicting him after trial (Carter, J. and a jury) of conspiracy to violate 21 U.S.C. §846 and sentencing him to the care and custody of the Attorney General for a period of 5 years, followed by 3 years special parole; and a $5,000 committed fine.

The appellant is presently at liberty on secured bail of $100,000 pending appeal.

Statement of Facts

A nine-count indictment was filed on January 6, 1975 charging the Appellant James Capotorto* and twenty-eight other defendants with conspiring to distribute Schedule I and II narcotic drug controlled substances.

The indictment alleged that from January 1st, 1973 to June 18th, 1974 the Appellant in conjunction with the other named defendants conspired to distribute Schedule I and II narcotic drug controlled substances.

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* The indictment named twenty-nine defendants in all, only seventeen of whom stood trial until verdict. Twelve defendants were severed prior to trial, six having plead guilty either to this indictment or a superseding information.

THE TRIAL

1. THE PROSECUTION CASE

Albert Rossi, Jr. was the Government's principal witness at the trial.

Rossi was a high school dropout with a history of psychiatric treatment, who had joined the Marines in 1963 or 1964 and who, after being wounded, was discharged in 1966 primarily for a "nervous condition." He was receiving psychiatric care and taking medication for his condition until the time that he testified at the trial (143-4; 367-8, 415-16, 441-3).*

Shortly after his discharge from the military his career as a violent criminal commenced. In 1966, he was arrested for assault (145); in 1967, he pleaded guilty to assaulting a person in the eye with a tire iron (145); in 1968 he was convicted for uttering a false instrument (154); in 1969 he was involved in an armed robbery resulting in a woman bein shot (154); in 1970 he committed a robbery of a fruit stand (155); and in 1973 he was involved in still another robbery of the Sealtest Milk Company (150, 156). He had also been involved in a transaction involving $650,000 in stolen securities (360); and additionally, in 1973, Rossi testified, he and two others attempted to murder a man named Sal Ripulone (156). Furthermore, as of the date of

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* The numerals in parenthesis refer to the pages of the Trial Transcript.

his testimony, Rossi had pleaded to one count of the conspiracy involved in the instant case and was awaiting sentence (158). He was also facing indictments in two separate counties in New York State for criminal sale of a drug in the first degree (159). He faced a minimum jail term of 25 years to life in each of those indictments.

Rossi testified to many different transactions, and crimes with many different people. One of the focal points of the trial, however, was a robbery by Rossi, his partner Coraluzzo, and a gang whom they hired, of 12 kilograms of cocaine from Franklin Flynn, a Florida businessman in late September, 1973; and Rossi's attempts to dispose of the loot. The circumstances leading to the robbery as testified to by Rossi, were as follows:

The Robbery of Flynn

Angelo Iacono, an acquaintance of Rossi, told him in the summer of 1973 that he was partners with a man named Franklin Flynn, who purportedly had access to large quantities of cocaine (184-7). At that time, Rossi testified, he was discussing the possible sale of 2,500 pounds of marijuana with Iacono (184-7).

After several meetings and conversations Rossi was informed by Flynn that he had a substantial quantity of cocaine to sell (192). Rossi and Coraluzzo decided to rob the drugs from Flynn, instead of buying them, and accordingly, Coraluzzo

recruited others to assist in the robbery (195). Those recruited for the trip met with Rossi and Coraluzzo on September 20, 1973. They were: Robert Browning, Joseph Deluca, Louis Lepore, James Angley, and Gary Pearson. The men were told that they would be going to Florida to rob cocaine, and that Rossi would provide the "artillery" (192-7). Each of the robbers was promised $7,500 for his assistance, with the exception of Deluca who was to get $5,000.

Accordingly, on September 22, the seven boarded an airplane and flew to Florida, with tickets in fictitious names purchased and provided by Albert Rossi (Rossi:197-8, 201; Pearson: 914-15, 1034-4, 1044). After arriving in Florida, where the men split up and checked into separate motels, Rossi called Flynn, and after several meetings involving Rossi, Coraluzzo, Pearson, and Lepore on one side; and Flynn, Silverio and Iacono on the other, a time and place were agreed upon for Flynn to sell the cocaine to Rossi (Rossi: 201-04; Pearson: 917-23, 1038-9).

Rossi and his men prepared for the robbery of Flynn by checking out of their motels, with the exception of the room where the robbery would take place, and "wiping down" the room in order to eliminate fingerprints (Rossi: 205-06; Pearson: 925). When Flynn and his men arrived and the cocaine was produced by them -- allegedly to be chemically tested for Rossi by his man,

Browning -- Rossi and his men displayed handguns, announced that they were committing a "stickup", tied up Flynn and his men, and left with the cocaine (Rossi: 207-11; Pearson: 926-9). The drugs were taken to New York, tested, repackaged, and stored, some at the house of Marilyn Greco, and some at the home of Coraluzzo's mother-in-law (Rossi: 211-18, 221; Pearson: 929-30, 943-4). Rossi's gang were paid in drugs and money (Rossi: 223-5; Pearson: 935-6).

An objection to this testimony on behalf of the defendants who were admittedly not involved in the transaction was overruled (208-9).

Rossi and his partner Coralusso attempt to sell the Florida cocaine-loot.

1. The Sales to Jerry Rubin:

In September or October, 1973, Rossi and Coraluzzo sold 30 ounces of cocaine to Jerry Rubin, through a Mr. DiGeorgio, for $20,000 (226-9).

Another delivery of a kilogram was subsequently made, but according to Rossi, Rubin was unable to pay and returned the cocaine with one of the sealed plastic packages apparently opened and adulterated. When questioned by Rossi, however, Rubin denied that it had been opend and so Rossi testified, he marked the "touched" packed and replaced it in Marilyn Greco's attic (231).

2. The Sale to "Boots"

In September, 1973, Louis Lepore allegedly told Rossi that he had a customer, "Boots", for a large quantity of cocaine. A meeting was arranged and after negotiations 30 ounces of cocaine was to be sold to Boots through Deluca and Lepore (232-5). Deluca subsequently delivered the cocaine and Rossi was paid $20,000 by Lepore, in payment (236-9). Apparently Boots' customers, Cimmino and Toutoian, were supposedly so pleased with the quality of the cocaine that Boots said that he would take all of the remaining cocaine (239). Discussions supposedly took place, according to Rossi, but no further sales were made to Boots (239-42).

3. The Sale to Guerra

Rossi testified that in September or October, 1973, he sold 30 ounces of cocaine to Louis Guerra for $10,000 (242, 244).

4. Guida and Bivens

Allegedly in September, Rossi gave Guida a 1/4 kilogram of cocaine to give to Bivens to sell. According to Rossi, Guida later told him that he had given the drugs to Bivens, but Rossi testified he was never paid (248-9).

On a subsequent occasion, Guida purportedly took another 1/4 kilogram of cocaine to be given to Bivens (248-9).

5. The Attempt to Sell to Peter Cosme

Rossi testified that after meeting Peter Cosme, the two

men discussed the possible sale of some of the cocaine to him and that he gave Cosme a sample. However, no sale was made to Cosme at that time (249). Rossi did testify, however, that Pearson was given a 15 ounce package of cocaine for Peter Cosme, and that Pearson paid Rossi $10,000 (250-2). Gary Pearson, another government witness, gave an account of the transaction different from Rossi's version. (Pearson: 938-9). He testified to a second sale to Cosme of a 1/2 kilogram within one week from the first sale (939-40).

6. The Sales by Maria Marrero

Additionally, Rossi testified that on two occasions some of the cocaine was sold for him by Maria Marrero. Once Marrero and her friend Carey were given one quarter of a kilogram of cocaine through Angley (269-70); and on another occasion, a kilogram of cocaine was taken to Boston by Carey, Marrero, and Rossi's man Croce, and was to be sold there to Marrero's connection. Apparently only 1/2 kilogram was taken by the customer and the rest was returned to New York and to Albert Rossi (276). Marrero, in her testimony as a government witness, talked of the trip to Boston (1420-24), but did not testify that she at any other time was involved in any other drug transaction.

7. Sale to Nathaniel Arnold.

In November, 1973, Rossi testified that he sold two 1/8th

kilograms of the cocaine to Nathaniel Arnold, through Charles Guida (288-90), and that at another time he gave Guida cocaine for Arnold (313). Rossi said that he was paid more than $12,000 by Guida from Arnold (314-16).

Sales by Rossi prior to September, 1973

In May or June of 1973, Rossi said that he was visited in New York by James Capotorto and Raymond Thompson, where they met together with Ernest Coraluzzo (170-1). At the meeting Rossi agreed to sell a kilogram of cocaine which, Capotorto said, was to be paid for by the combined monies of Thompson, Bertolotti, Camperlingo and himself (171-2). Accordingly, Rossi called Guerra to obtain the cocaine, and when Guerra delivered it the next day, Rossi took great care to ensure that Capotorto and Thompson did not meet his source of supply (173-4). Additionally, Guerra brought with him an extra kilogram of impure cocaine, and Thompson agreed to take on a "consignment" basis (171-5). Subsequently, in June, 1973 Rossi went to Florida and received money from Thompson in payment for the impure cocaine (177-9).

During a subsequent trip to Florida, Rossi testified that he spoke to Bertolotti and Camperlingo about payment (321). At that meeting which took place at Camperlingo's home in June or in July, Camperlingo indicated that Thompson was preparing to go to the Bahamas for a shipment of marijuana, and after some

discussions, Rossi and Coraluzzo agreed to take 500 to 600 lbs. in payment for the cocaine (324). After Thompson left, Rossi, Coraluzzo, Camperlingo, Bertolotti and Capotorto discussed when the marijuana would be arriving, and what would be done with it (325-6).

Objections to the testimony concerning marijuana made on behalf of Capotorto were overruled by the court (324).

In July or August, 1973, Rossi discussed a possible sale of marijuana with Angelo Iacono who was allegedly expecting a 2,500 pound shipment of marijuana. Iacono also explained to Rossi at that time that he was partners with Franklin Flynn, a man who had access to very large quantities of cocaine (184-7). Rossi testified that James Capotorto was not involved in the conversations or negotiations in any way, but he did say that James Capotorto was in the same bar, as was Rossi's wife, sister-in-law, and brother-in-law (184-6).

Rossi gets 500 pounds of Marijuana.

When Rossi got 500 pounds of marijuana in Florida, his testimony was that he, Louis Lepore, James Capotorto and Nicholas DiGeorgio rented a camper, and that the marijuana was driven to the New York metropolitan area in the camper by DiGeorgia and Rossi, with Capotorto and Lepore following in another automobile (328-9). After the marijuana arrived at its

final destination in a house owned by Louis Guerra, located in New Jersey, the marijuana was unloaded (329). Objections on behalf of Capotorto were denied (336).

Additionally, Rossi testified concerning a conversation that he had with Camperlingo in September, which pertained to the transfer of the marijuana and Rossi agreed to return to Camperlingo 125 pounds of marijuana (336-7).

Rossi testified that in August or September, 1973, he met Iacono at Kennedy Airport in connection with the sale to him of cocaine by Flynn (190). Iacono had with him one ounce of cocaine (190).

Rossi testified that he received approximately $30,000 from a drug dealer named Frank Lucas in partial payment for a large quantity of heroin (342). Rossi testified that he had decided that he would not complete the same but would "beat" Lucas by failing to deliver the goods or return the money (342). He also stated that he gave Capotorto $3-$4,000 from that money, without indicating why (342).

On another occasion, Rossi testified he was given $250,000 from Frank Matthews (347-8). He said that he instructed Capotorto to take a valise full of money, together with Ripulone, to Ripulone's house (349-50). He contemplated "beating" Matthews as he had Lucas but was afraid for his parents' lives. He also

said that he learned that Capotorto was being held as a hostage and, consequently returned the money (349-50).

Rossi testified that in April, 1973, he was introduced to a man named Williams by Capotorto (347-51). Williams, he continued, introduced him to a man named Harrison, and through these two Rossi testified he "came to meet" Frank Matthews, a prominent figure in the illicit narcotic business (351). That was the basis for Rossi's claim that he met Frank Matthews through Capotorto (347-51). A deal was discussed for 30 to 50 kilograms of heroin for a price in excess of one million dollars (347-8).

In addition to that, Rossi said that he discussed the possible sale of drugs to Williams and gave him two ounces of cocaine on the same day and in the presence of Capotorto to help Williams get back in business (351-2).

Special Agent Harris Observes Capotorto in New York

James Harris, a special agent, testified that on May 17, 1973 he observed James Capotorto exiting from the Oasis Bar at 148th Street and Broadway with two other men. They got into a black Riviera automobile with Florida license plates and drove away (1527-8). Agent Harris went on to describe his own observations of a different bar, the Cellar Bar on Columbus Avenue and 95th Street, where he saw Willard Williams and Salvatore Ripulone. Afterwards, he testified, he saw Mr. Capotorto in the black

Riviera with Ripulone (1529).

Pearson also referred over objection to being told by Louis Guerra of a "rip-off" by Browning, Louis Lepore and Capotorto of one of Guerr's customers.

The Samuels Rip-off

In March, 1973, Rossi went to Florida to meet Greg Samuels, who told Rossi that he was interested in purchasing two kilograms of cocaine (166-7). From Florida, Rossi called Louie Guerra in New York and inquired whether he could supply that quantity. When assured that he could, Rossi told Guerra that he would send James "Lump Lump" Lombardo to New York to pick up the cocaine (167-8). Accordingly, Lombardo flew to New York and returned on the same day with the cocaine (169). No sale was made, however, because Rossi admitted that he stole $36,000 from Mr. Samuels which was never returned to him (478). The cocaine was returned (169).

Festa-Camperlingo Conversation

George Festa, a special agent, testified, over objection, that on May 3, 1974, he met Rossi in the United States Attorney's office (1531). At that time Rossi dialed a telephoned number and the agent spoke to a man who identified himself as "Joey" (1532). After the telephone conversation Festa testified that he went to Fort Lauderdale, Florida and called a telephone number

given him by Mr. Rossi (1535-6). The agent identified himself as Joey from New York; the other party identified himself as Joe. The two men agreed to meet at the 4 O'Clock Club later that afternoon (1536). When the agent got to the club, he met two men who identified themselves as Joey and Ray; Joe Camperlingo and Raymond Thompson (1536).

Festa told them of Rossi's problem of being in jail; Camperlingo responded by saying that Rossi had been bothering him by calling from West Street every day. At that same conversation Camperlingo indicated that he had been "burnt" by Rossi in the past, and that he did not want to do business with him (1538).

The men then discussed smuggling by Camperlingo and Thompson of 150 kilograms (there was no testimony of what substance) from Costa Rica into the United States (1538). During that conversation Camperlingo allegedly discussed a forthcoming trip to purchase 2,000 pounds of marijuana (1536-41).

Gary Pearson

Gary Pearson, one of those who accompanied Rossi to Florida and participated in the robbery, testified to his own drug transaction with Guerra or others, from June through October, 1973, involving cocaine, heroin and marijuana (1006, 1018). He testified to a specific transaction involving 1/8 kilogram of

heroin which he sold to Louis Guerra and that he had received from Johnny Disalvo (1008-09). He also referred to a transaction involving ten pounds of marijuana (1010).

When asked about James Capotorto, Pearson testified that he first met him in early 1973 and that he met him, all told, three or four times (1021, 1047). The first meeting was at a boutique, the Bell Bottom Blues. No drug conversations or transactions took place (1021, 1047). When he met him the second time, it was at a funeral. Again, no involvement or discussion with drugs (1022, 1047). At the third and fourth times that Pearson met Capotorto, again there were never any drug transactions, dealing or negotiations (1022, 1047, 1048, 1049).

The Robbery of the Doctor

In February or March, 1973, Rossi testified that he had discussed buying 600 pounds of manita, a narcotic cutting agent, from a doctor (181). Instead of going through with the "deal", however, Rossi hired Vasta who helped him rob the doctor (181). After the robbery was completed, Rossi sold the manita to "Carlie the Blind Man" for $100 a pound.

Incomplete Transactions

While a fugitive and staying at the home of Louis Lepore, Rossi testified that there were discussions with Joseph Lepore who, Rossi testified, indicated that he could sell a kilogram

of cocaine (270). No sale was completed, however (270-3). Pearson, in his testimony, repeated that conversations took place with the Lepore Brothers concerning cocaine sales (1000-03).

Rossi also testified to another conversation and "aborted sale" of cocaine, which allegedly took place at the apartment of Cathy Spangler, sometime after November 18,1973. This sale apparently was to be made to Carey, and to be delivered by Deluca and was to be for 1/4 kilogram (230-4). This sale, too, however, was never completed.

Rossi also testified to conversations concerning cocaine and its sale with Stephen Crea and Vincent Artuso. Sums of $50,000 and $20,000 were allegedly agreed to, and samples were purportedly given (296), but after testimony of extensive conversations, once again no sale was effectuated (297).

Testimony of another aborted sale was allegedly related to Rossi by Charles Guida, and Rossi's testimony about it was detailed (308-12). Rossi's testimony included a narration of a near arrest of Guida and an escape in Rossi's automobile--used by Guida without Rossi's permission (312).

John Serrano's Testimony

John Serrano, a government witness, testified that he knew James Angley, and that in December, 1973 he was involved in a cocaine transaction with Angley as the supplier, and with Roberto

and another man as the prospective buyers. Although unknown to Serrano at that time, Roberto was then cooperating with the government, and the other buyer was a special agent Muniz, who also testified at the trial (Serrano: 1109-17; Muniz: 1151-4).

Serrano admittedly knew none of the co-defendants or co-conspirators, except for James Angley (1130).

The Defendant Capotorto's Case

James Capotorto, called one witness Thomas G. Peters, a physician practicing in Fort Lauderdale, Florida.

Thomas G. Peters testified that he was a physician with a general practice of medicine in Fort Lauderdale, Florida (1957-8). He states that he knew James Capotorto as a patient - not a social friend or business associate (1958).

In May, 1973, Doctor Peters treated James Capotorto for infectious hepatitis (1960, 1961). The doctor saw Mr. Capotorto in his office on May 25, 1973, and ordered him into Holy Cross Hospital in Fort Lauderdale that same day (1961). Capotorto was confined to the hospital until June 4th. At that time Mr. Capotorto still had signs and symptoms of the disease: He displayed some nausea, his eyes were still yellow, and his blood tests were not normal (1965). Treatment was continued after the patient was discharged from the hospital but the doctor did not need to see him again until July (1965, 1969).

The patient was not to have activity for two weeks subsequent to his release from the hospital and he was to stay within the house because of the still lingering effects of the hepatitis (1966). The doctor communicated by the phone with Mr. Capotorto approximately six times within the next two weeks. The doctor would call Mr. Capotorto at his home in return to Mr. Capotorto's calls (1966). The last call made by the doctor in connection with the hepatitis was approximately two to three weeks after June 4th. The other calls were dispersed intermittently within that period (1967).

Mr. Capotorto's attorney attempted to introduce hospital records concerning his client's condition from May 25th to June 4th and showing the treatment received but they were not admitted, except as to the dates of treatment (1963, 1968).

On January 30th, 1975, on the third day of their deliberations the jury returned a verdict finding the Appellant Capotorto guilty on Count One.

ARGUMENT

POINT I

THE CONVICTION OF THE APPELLANT CAPOTORTO SHOULD BE REVERSED BECAUSE OF THE PREJUDICE TO THE APPELLANT AS A RESULT OF THE VARIANCE BETWEEN THE SINGLE CONSPIRACY CHARGED AND THE MULTIPLE CONSPIRACIES PROVEN.

Despite the Court's instruction to the jury that the finding of more than one conspiracy requires acquittal of all the defendants, the evidence, as a matter of law, can not sustain a finding of only a single conspiracy. The Appellant Capotorto was substantially prejudiced by the variances between the pleading and the proof.

Prior to trial, motions for severance were made on behalf of various defendants, including Capotorto, on the grounds that they were charged with more than one conspiracy and were improperly and prejudicially joined in one indictment. These severance motions were denied and this was error. United States v. Miley, F2d (2d. Cir. 1975) slip op. 2363, 2387-8; Kotteakos v. United States, 328 U.S. 750 (1946); United States v. Sperling, 506 F2d 1323, 1340-41 (2d Cir. 1974).

Unquestionably the most surprising and perhaps the most prejudicial feature of this case was the size of it. A nine-count indictment, 74 Cr.620, was filed on June 18, 1974 charging the Appellant and twenty-nine other defendants with violating 21 U.S.C. 846. On October 10, 1974, the Court of Appeals handed down its

decision in United States v. Sperling, Supra, 506 F2d at 1340 where it said:

> "We take this occasion to caution the Government with respect to future prosecutions that it may be unnecessarily exposing itself to reversal by continuing the indictment format reflected in this case. While it is obviously impractical and inefficient for the Government to try conspiracy cases one defendant at a time, it has become all too common for the Government to bring indictments against a dozen or more defendants and endeavor to force as many of them as possible to trial in the same proceeding on the claim of a single conspiracy when the criminal acts could be more reasonably regarded as two or more conspiracies, perhaps with a link at the top. Little time was saved by the Government's having prosecuted the offenses here involved in one rather than two conspiracy trials. On the contrary many serious problems were created at the trial level, including the inevitable debate about the single conspiracy charge, which can prove seriously detrimental to the Government itself."

On October 25, 1974, the United States Attorney Paul J. Curran appeared before this Court in United States v. Tramunti, F2d , (2d Cir. 1975) Slip op. 2107; and told the Court that the case had as many defendants, thirty-two, as it did because Sperling had not come down when that indictment was filed and the Tramunti case was tried.

In this case both the trial and the superceding indictment

came almost three months after the decision in Sperling, which was October 1974, yet the indictment names twenty-nine people as defendants, seventeen of whom ultimately go to trial.

The evidence at trial showed that although Rossi and Coraluzzo were part of the Core group, they dealt with various individuals, in various enterprises at various time. The record shows that they sold cocaine on one occasion to the Appellant Capotorto, and part of it was paid for with marijuana and that was the only dealing they had with the Appellant. The record shows that the Appellant met Gary Pearson three or four times, but that they had no dealings of any kind or even knew each other's activities. Pearson, who testified primarily against the defendant Guerra, did state over objection that Guerra had told him that Capotorto had "ripped-off" a customer of his. This prejudicial and irrelevant testimony would never have come out if there had been, as there should have been, separate trials. On the one occasion that Guerra gave cocaine to Rossi who sold it to Capotorto, Rossi had Capotorto leave so he could not see the source for the cocaine. Capotorto had no dealings with any of the other individuals that Rossi dealt with, Crea, Cimmino, Bivens, Arnold, Joseph Lepore and Anthony DePasqua.

The record moreover shows a change in personal and operation after September 22nd, 1973, the Flynn "Rip-off". Prior to that

time Rossi and Coraluzzo got cocaine from Louis Guerra which they either used in their rip-offs, as with Greg Samuels in March, 1973 from whom they stole $36,000, or they sold on one occasion to the Appellant. After September 22nd, Rossi and Coraluzzo sold cocaine to Guerra and others, but not to Capotorto and not to the other Appellants from Florida, who participated in the earlier single cocaine transaction. Rossi and Coraluzzo were first buyers, and after September they were seller's, but Capotorto's limited association with them ended in September, 1973.

The evidence would establish then at least two conspiracies, before and after September 22nd, 1973, and possible a third conspiracy with Louis Guerra, for it is difficult to find any basis for a partnership between Rossi, Coraluzzo and Guerra when Guerra got paid, or at least tried to get paid for all his sales to them, and paid Rossi and Coraluzzo for the cocaine they sold to him.

It seems fair to state that where a trial consumes almost four weeks and twenty-nine people are prosecuted there is spill-over prejudice. In Kotteakos v. United States, Supra 328 U.S. at 774, Mr. Justice Rutledge in writing for the Court said:

> "The dangers of transference of guilt from one to another across the line separating conspiracies, subconscious or otherwise, are so great that no one can really say prejudice to substantial right has not taken place."

Perhaps it is because of the artificial attempt to connect many unrelated people, in a single conspiracy, that at the trial all

counsel, including the Government's trial attorneys, had trouble understanding or articulating how the evidence could be viewed as one conspiracy. For example, after repeated requests by the defense for a description or definition of the conspiracy charged, the Court directed the prosecutors, well after commencement of the trial, to describe the parameters of the conspiracy charged in the indictment. After some apparent difficulty the Assistant United States Attorney in charge of the case described it alternatively as

> "witness testifying of their association with each other and with the defendants on trial in narcotics transactions."

and as a

> "single conspiracy involving Mr. Rossi buying and selling narcotics from the individuals on trial", specifically including marijuana, cocaine and heroin.

However, a defense objection was made to exclude certain portions of Gary Pearson's testimony, as not being admissible under the Government's theory. After a brief colloquy with the prosecutor the Court deferred ruling and suggested that the United States Attorney "think about that" overnight, and that he be prepared to describe the conspiracy on the next day.

On the following day, apparently after giving the matter some more thought, the United States Attorney described the conspiracy as follows:

> "...it is the government's position that Mr. Coraluzzo, Mr. Rossi, Mr. Pearson, Mr. Deluca, Mr. Lepore, all the defendants... formed a core group of people who dealt in narcotics..."

When asked by the court specifically who comprised the core group he replied,

> "Mr. Rossi, Mr. Pearson, Mr. Deluca, Mr. Browning, Charles Guida and Mr. Angley" adding that Mr. Coraluzzo was a member of the core and that "these people bought narcotics from each other and sold narcotics to each other..."

It is significant that the appellant, James Capotorto, was was not even alleged to have been a member of the core group. Moreover, the variance between the conspiracies charged and multi-conspiracies proved resulted in severe prejudice to Capotorto. Failure to try Capotorto resulted in severe prejudice to him because of the substantial inflamatory testimony admitted at the protracted trial which would not have been properly admissible against Capotorto and which exceeded by far any permissible inference concerning the scope of his agreement. The most obvious example in the robbery of Flynn which was a focal point for much of the trial and which involved testimony concerning an armed robbery of a large amount of cocaine - 12 kilograms with which Capotorto had no connection, either as to its theft or its subsequent distribution.

In United States v. Borelli, 336 F2d 376, 383 (2d Cir. 1964)

the Court held:

> "This simple picture tends to obscure that the links at either end are likely to consist of a number of persons who may have no reason to know that others are performing a role similar to theirs -in other words the extreme links of a claim conspiracy may have elements of the spoken conspiracy."

Here there is no record of any dealing's or acknowledgement of the existence of those people on the spokes by others on different spokes.

It is worthwhile to state that the scope of Rossi's and Coraluzzo's narcotic activities which was by no means the outside limits of their illegal activities were strictly limited by Rossi's ability to locate new sources of supply. Since Guerra complained to both Pearson and Mengrone about the heavy monetary loss he suffered dealing with Rossi, Rossi had to look elsewhere. Rossi's new connection Franklin Flynn was robbed by Rossi on the very first deal, so he would, if he could, have to find a new source. In spite of Rossi's statements about his ability to gather large quantities of heroin, the only heroin he actually handled was one ounce he got from Nathaniel Arnold.

Accordingly it was error to deny the motions for severance and the right of the Appellant to a fair trial was prejudiced.

POINT II

THE EVIDENCE PRESENTED TO THE GRAND JURY WAS INSUFFICIENT TO INDICT THE APPELLANT CAPOTORTO FOR THE CONSPIRACY CHARGED IN COUNT ONE.

On June 18, 1974, indictment 74 Cr.620 was returned by a Grand Jury empaneled in the Southern District of New York, charging the Appellant Capotorto and twenty-nine other defendants with conspiring to violate the federal narcotics law and other substantive violations. On January 6, 1975, the date set for the trial* the Government went before a second Grand Jury and obtained a superseding indictment charging the Appellant Capotorto and twenty-eight other defendants** with conspiracy to violate the federal narcotic laws. Defense counsel upon receiving the minutes of the Grand Jury proceedings which resulted in the superseding indictment moved to dismiss the indictment. The motion was denied. This was error, and the conviction of the Appellant should be reversed. Hale v. Henkel, 201 U.S. 43, 65 (1906); Costello v. United States, 350 U.S. 359, 364 (1956) (concurring opinion J. Burton);

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* This date was selected by agreement between the various counsel at a pre-trial conference on October 3rd, 1974.

**The defendant Louis Lepore had plead guilty to indictment 74 Cr.620 and was listed only as a co-conspirator in the superseding indictment 75 Cr.5.

United States v. Estepa, 471 F2d 1132, 1136 (2d Cir. 1972).

Prior to the empaneling of a jury on Monday, Jan. 6th, 1975, counsel for the Government informed the Court that the Grand Jury testimony of its main witness Albert Rossi Jr. made no mention of one of the defendants on trial, Raymond Thompson, and Rossi had been before a Grand Jury that morning and a superseding indictment had been returned. Rossi, who had testified before a Grand Jury in this matter on May 10th and June 7th, 1974, testified briefly before the Grand Jury on January 6 naming only ten of the twenty-nine defendants in the superseding indictment in his testimony. While the record of Rossi's first two grand jury appearances consisted of twenty-seven pages of transcript, his testimony of January 6th ran to less than three pages.

Defense counsel, prior to entering a plea on the superseding indictment, inquired of the Government through the Court whether both indictments were voted by the same Grand Jury. The prosecutor declined to answer and the Court declined to rule, although the indictments, the original and the superseding, were both before the Court and the Court could have taken judicial notice that they were signed by two different Foremen. On January 8th, when copies of Rossi's Grand Jury testimony of the Sixth was available, motions to dismiss were renewed based upon the insufficient evidence before the Grand Jury. The Government refused to respond

when the Court sought to inquire if there was any additional evidence before the January 6th Grand Jury aside from Rossi's testimony and the motions were denied.

At the conclusion of the Government's case the motions to dismiss because of the insufficiency of the evidence before the Grand Jury which returned the superseding indictment were renewed again. It was now established that Rossi had testified before two different Grand Juries and that the two indictments had been voted by two different Grand Juries, that on January 6th he had discussed only three separate cocaine transactions with different sources for the cocaine and different buyers, and that his prior Grand Jury testimony had not been read to the Grand Jury that returned the superseding indictment.

The facts establish that certain dates in the superseding indictment are different than the dates set forth in the original indictment. Rossi's Grand Jury testimony of June 7th, sets forth certain dates for his dealings with various defendants named in both indictments. The dates for these transactions were not mentioned by Rossi in his January 6th Grand Jury appearance. The change in dates in the superseding indictment therefore is not based on Rossi's testimony of January 6th, nor could it be based on Rossi's earlier Grand Jury testimony since those dates are the same dates that appear in the original indictment. Since no other witness who testified at the trial appeared before the Grand Jury,

the change in dates was typed into the superseding indictment by the Government without any proof to support such dates or the overt acts and substantive crimes that occurred on those dates.

The motions to dismiss the indictment because of the insufficiency of the evidence before the Grand Jury was denied.

The record clearly shows that the Appellant has established by a clear and positive showing based upon factual averments that the indictment was invalid because it was based on insufficient evidence and that the Government was required to show, if it could, that the indictment was valid and in absence of such a showing the indictment should have been dismissed. United States v. Greenberg, 204 F. Supp 400, 402 (S.D.N.Y., 1962); United States v. Geller, 154 F. Supp. 727, 730 (S.D.N.Y., 1957).

The Grand Jury testimony of Albert Rossi on January 6th made no mention of the existence, much less the criminal conduct, of nineteen of the twenty-nine defendants, nor did it mention the robbery of cocaine from Franklin Flynn in September, 1973 and its subsequent distribution which was the basis of all the overt acts in count one as well as all the substantive counts in the indictment. The Court of Appeals in an opinion by Judge Learned Hand stated:

> "We should be the first to agree that, if it appeared that no evidence had been offered that rationally established the facts, the indictment ought to be quashed; because then the Grend Jury would have in substance abdicated."
> United States v. Costello, 221 F2d 668, 377 (2d Cir., 1955)

Mr. Justice Burton adopted this point of view in his concurring opinion in Costello v. United States, 350 U.S. 359, 364 (1956) where he said:

> "Likewise, it seems to me that if it is shown that the Grand Jury had before it no substantial or rationally persuasive evidence upon which to base its indictment that indictment should be quashed.

The indictment in this matter charged a conspiracy lasting from January 1, 1973 to June 18, 1974, but the Grand Jury testimony uttered in support of that indictment was a sale of two kilograms of cocaine to Steven Crea and Vincent Artuso with no date given, a sale of one kilogram of cocaine to Peter Cosme from the "Florida cocaine", and a sale of two kilos of cocaine to Raymond Thompson and James Capotorto in May or June, 1973 which was obtained from Louis Guerra. The evidence before the Grand Jury was not only insufficient, but the Grand Jurors obviously voted an indictment on a complex and lengthy matter without giving the case any real consideration.

In the course of the trial, from its outset until the close of the Government's case the prosecutor maintained that one of the objects of the conspiracy was to deal in marijuana and heroin yet the record indicates that there was no mention of marijuana or of heroin before the Grand Jury. The Government insisted however that all three, heroin, cocaine and marijuana were charged

in the indictment, thus it appears that the Government prepared an indictment which the Grand Jury never examined closely or never had the time to carefully consider.

Since each count in the indictment must be considered as an independent indictment it is clear that there is no evidence to support six of the eight substantive counts and insufficient evidence to support the conspiracy count, and that there was no basis upon which the grand jurors could have approved the indictment in its final form. Gaither v. United States, 413 F.2d 1061 (C.A.D.C., 1969); United States v. Daneals, 370 F. Supp. 1289 (W.D.N.Y., 1974).

In this instance it was clear that based upon the original and superseding indictments and the minutes of the Grand Jury proceedings themselves that the appellant produced sufficient evidence to require the Government to come forward and show, if it could, that the indictment was based on sufficient evidence. The Government, rather than taking refuge behind the secrecy of the Grand Jury, a secrecy that belongs to the Grand Jurors and not to the Government, could and should have sought to resolve the issue then, especially since all defense counsel had the Grand Jury testimony and the witnesses identity was no longer a secret. Now it remains to this court under its supervisory authority to exercise the authority that the District Court refused to exercise and dismiss the indictment. United States v. Estepa, Supra, 471 F2d at 1136.

POINT III

THE COURT ERRED IN FAILING TO CHARGE THE JURY THAT THEY HAD TO FIND THE APPELLANT HAD ACTUAL KNOWLEDGE OF THE SCOPE OF THE CONSPIRACY.

The Court, in charging the jury on the conspiracy count instructed them that,

> "Knowledge, wilfulness and intent exist in the mind... In making this determination you should presume that a person intends the natural and probable consequence of his acts."

The Court gave this instruction to the jury as being the law as to both the conspiracy as well as the substantive counts. The Court declined to give a charge on specific intent as requested and an exception was taken to that portion of the charge. The Court's charge was erroneous and the judgment of conviction should be reversed. United States v. Feola, 43 U.S.L.W. 4404, 4411 (March 19, 1975); United States v Cangiano, 491 F2d 906, 910 (2d Cir. 1974).

The record establishes that as to the defendant Capotorto there is proof of his participation in one transaction for two kilograms of cocaine, which was paid for, in part with marijuana. There is nothing in the record of this conspiracy to distribute cocaine, which establishes the Appellant Capotorto's participation in any of the several small dealings in heroin or attempted dealings in heroin. There were three mentions of heroin in this case where

a transaction actually occurred; two times when Gary Pearson obtained one ounce of heroin from John DiSalvo and sold it to Louie Guerra, and a third transaction for an ounce of heroin that Albert Rossi purchased from Nathaniel Arnold. The Appellant Capotorto played no part in these transaction, had no knowledge of them and indeed they were not part of the conspiracy charged. There were two other mentions of transactions involving heroin, neither of which was completed, because they were both "rip-offs". The Government in summation conceded that the contemplated deal with Frank Matthews was a "rip-off" from its inception, so although Capotorto did know of this deal and played a role in it, it is clear that he never could have conspired to deal in heroin because the core members of the conspiracy did not entered to deal with Matthews, but merely to rip him off. Insofar as the Lucas deal was concerned, while Rossi insisted that he wished to go through with it at first, both he and Government witness Pearson testified that Ernie Coraluzzo never intended to make the deal, but merely intended it as a "rip-off" from the start.

Aside from the inherent prejudice in admitting testimony about large amounts of heroin that are never bought or sold in what is essentially a cocaine case United States v. Adams, 385 F2d 548, 551 (2d Cir. 1967), these were not acts engaged in for the purpose of negotiating a heroin transaction, but merely acts of

robbery which were not part of any conspiracy charged. Nor were these transactions admissible to rebut any defense of lack of knowledge or intent insofar as the three defendants who testified; Steven Crea, Joseph Lepore and James Angley were concerned. They played no role whatsoever in any of the heroin transactions testified to.

This Court, in United States v. Borelli, 336 F2d 376, 385, 386 (2d Cir. 1964) set forth the rule that:

> "The scope of his agreement must be determined individually from what was proved as to him... It becomes essential to determine just what he is promoting and making "his own."

Here as in Borelli, supra the Jury's attention was not focused properly on the extent of his agreement, and this was crucial because of the nature of the core conspirators, Rossi and Coraluzzo. Rossi and Coraluzzo were criminals who would and did almost anything and everything illegal. Their activity was criminal, but the charge was conspiracy to violate the narcotics laws, not crime per se, and the Court by failing to call the jury's attention to the actual knowlege required, rather than merely letting knowledge be inferred from conduct allowed the appellants to be convicted of conspiracy, rather than the crime charged, conspiracy to violate the narcotic laws United States v Gallishaw, 428 F.2d 760, 763 (2d Cir., 1970).

The evidence shows that even as to those activities where Capotorto was present and participated such as the introduction to "Trees", Williard Williams, that he made for Rossi up to the eventual meeting with Matthews, Rossi's intent was wholly different, separate and apart from the Appellant's. Rossi and Coraluzzo were as the Government admits, looking to "rip-off" Matthews but Capotorto would never agreed to be held by Matthews and his associates as a hostage as a sign of good faith if he was part of a plan to rob Matthews.

Capotorto is again present when Rossi meets Angelo Iacono and renews an old acquaintanceship. Iacono leads Rossi to Franklin Flynn, a large-scale supplier of cocaine. Capotorto who is present when Iacono delivers a sample to Rossi in New York City, is not part of Rossi's rip-off of Flynn however. Capotorto is not present at the rip-off of Flynn, nor does he aid in or receive part of the cocaine from the Flynn robbery. Clearly, the intent of Rossi and Coraluzzo is directly opposite that of Capotorto.

If the Court had instructed the jury as to the fact that they could only find knowledge of the scope of Capotorto's agreement by finding that he had actual knowledge, rather than inferring such knowledge from his meetings with Rossi and others then the jury would have had a proper guideline in determining if there was a conspiracy to violate the Federal narcotic law, rather than

being left to determine the existence of a conspiracy merely to violate any law.

The plans that Rossi and Coraluzzo had as evidenced by the testimony was so totally different from Capotorto that the Court itself commented after sentence that the only thing the Appellant was convicted of involved two kilograms of cocaine, yet the jury in reaching a verdict was allowed to range over a mass of evidence without proper instruction.

The error in the Court's charge was compounded by its refusal to give a charge on "Single-Transaction". This requested charge would have brought home to the jury the fact that knowledge of Rossi and Coraluzzo, and their various criminal activities was not enough to convict even if there was as the Court found, only a single transaction with them.

The Courts refusal to charge on specific intent coupled with its refusal to charge on single transaction was error and the judgment of conviction should be reversed.

POINT IV

THE COURT ERRED IN RECEIVING INTO EVIDENCE A LOST AND FOUND REPORT FOR THE TRUTH CONTAINED THEREIN.

The Government on its direct case, over strenuous defense objections, introduced into evidence a lost and found report, for the truth contained therein which had been prepared by the chief of Security at the Diplomat Hotel in Hollywood, Florida. This was error and the judgment of conviction should be reversed. United States v. Rosenstein, 474 F2d 705, 710 (2d Cir. 1973); Johnson v. Lutz, 253 N.Y. 124 (1930); Juaire v. Nardin, 395 F2d 373, 379 (2d Cir. 1968). In addition to the report a wallet and slip of paper were offered as Government Exhibits. The report indicated that the wallet and slip were found in the area of room 1049 and 1051 apparently by a maid who gave it to Security Officer Jaddich, who in turn gave it to Mr. Alfonso Marino, chief of Security.

The report, admitted for the truth of its contents, indicated, among other things that the wallet had been lost by Flynn. The report was improperly offered and admitted into evidence under the "business records rule" 28 U.S.C. §1732, to the substantial prejudice of James Capotorto.

The Federal "Business Records Rule", 28 U.S.C. §1732, provides, in fact, that a writing is admissible into evidence if the writing was made as a memorandum of record of an act, transaction,

occurrence, or event, and if "made in the regular course of any business, and if it was the regular course of such business to make such memorandum..." 28 U.S.C. §1732(a).. In order to satisfy the statutes and requirement that the writing be made "in the regular course of business" it is necessary that the business record be of the type essential and useful to the business efficient operation. Palmer v. Hoffman, 318 U.S. 109 (1943). Those matters are of the type in which the business keeping the record is directly concerned as a participant and reflects the day to day operation of the commercial enterprise. Standard Oil Co. v. Moore, 251 F.2d 188, 213 (9th Cir. 1958), cert. den. 356 U.S. 975. If the writing does not pertain to a matter in which the business was a direct participant, but rather to an incident outside of its business, it is not admissible under §1732, even if it concerns a matter of importance to the business, Standard Oil v. Moore, Supra. In the hotel business writings such as guest registration cards and records, purchases, sales, deliveries, wage payments, bank deposits, and the like would fall into that classification. A lost and found report, which is not concerned with the day to day operation of the business, is not a record made in the "regular course" of the hotel business and not admissible in evidence.

The admission into evidence of the report was extremely prejudicial to the Appellant James Capotorto. Firstly, it was

only through the report that any foundation could be laid for admission of the wallet containing the identification of Franklin Flynn which the Government contended was lost by Mr. Flynn, [Government Exhibit 79] and the slip of paper (Government Exhibit 80) containing a list of telephone numbers connecting Mr. Capotorto with Mr. Flynn. This was the only evidence attempting to connect Mr. Flynn with Mr. Capotorto or the "rip-off" of Flynn's cocaine; and in fact, Mr. Rossi testified that Capotorto was not involved in the robbery. In view of that testimony, and the Government's closing argument emphasizing and arguing that the exhibits showed showed a relationship between Flynn and Capotorto, the prejudice suffered by the appellant warrants reversal of the conviction.

Moreover, by virtue of the "multiple hearsay" in the report (Marino was told by Jaddich that a maid found the wallet), the report - even if within the statute- was improperly admitted because of the lack of any inherent probability of trustworthiness. Central Railroad Co. v. Sottnek Co., 258 F2d 85, 88 (2d Cir. 1958).

In Yates v. Bair Transport Inc., F. Supp. 681 683 (S.D.N.Y. 1965) Judge Tenney held:

> "Despite criticism of the Johnson case, the limitation it imposes seems sound and in accord with the basic philosophy of the business entry statutes. These acts were intended to make admissible records which because made pursuant to a regular business duty, are presumed to be reliable. The mere fact that recordation of third party statements is routine, taken apart from the source of the information recorded, imports no guaranty

> of the truth of the statements themselves. There is no reason for supposing an intention to make admissible hearsay of this sort. So to construe these statutes would make them almost limitless dragnets for the introducion of random,irresponsible testimony beyong the reach of the usual tests for accuracy...."

See also Harrington v. Sharff, 305 F2d 333, 339 (2d Cir. 1962).

The receipt into evidence of the lost and found report enabled the Government in summation to refer to the date time and place of the recovery of the wallet, and tie it to Rossi's "rip-off" of Flynn. The report was an important device whereby the Government was able to tie the Appellant to an event in which he had no part, the "Flynn Rip-off".

The receipt of the lost and found report into evidence was error and the judgment of conviction should be reversed.

POINT V

THE COURT ERRED ON RECEIVING INTO EVIDENCE THE BUSINESS RECORDS OF THE SHELL OIL COMPANY.

The Court received into evidence, the business records of the Shell Oil Company against the Appellant over objection. This was error and the judgment of conviction should be reversed. United States v. Schwartz, 464 F2d 499, 511 (2d Cir. 1972; United States v. Tellier, 255 F2d 441, 448 (2d Cir. 1958).

In its direct case the government offered into evidence certain business records of the Shell Oil Company consisting of sales receipts or invoices [charge slips] for products sold at the company's service stations (Government Exhibit 118). The witness, Nicholas Maggio, Shell Company's Special Investigator Relating to Credit Cards, was unable to say who signed the charge slips and confirmed that the signatures were "mostly illegible"; additionally, he did not identify whose charge account the records related to. When first asked whether the slips showed whose account was charged the witness indicated that they did. When upon direct examination by the Government he was asked the cardholder's name the witness, reading from the slips alternatively spelled James Caporto, Capoiato, and Capoidtio, He never testified that the cardholder or signer was James Capotorto or any of the other defendants.

Although the government argued and wanted the jury to infer that the cardholder was James Capotorto, no such inference would have been permissible in this case because the Government's witness was not in a position to know whose records were produced. No name was given by the company's expert witness, who produced the records during the course of the Government's case. The admission into evidence of the records without any testimony that the cardholder was the appellant, required the jury to speculate that the cardholder was the appellant or another defendant. The receipt in evidence was prejudicial to a fair determination of the issues in the case.

Moreover, the similarity of the name to that of the appellant, of course, is the cause of the prejudice to him. The records showed purchases of gasoline from July to September, 1973 and were obviously offered in an attempt to corroborate the testimony of Albert Rossi concerning his drive from Florida to New York. But since the testimony of Mr.Maggio and the exhibit introduced into evidence through him (Government Exhibit 118), did not reasonably serve to prove the charge levelled at the appellant - but rather because of the similarity in names tended to improperly prejudice him - the receipt of the Shell Oil Company business records into evidence was prejudicial error.

The records introduced into evidence were not properly

authenticated to make out a prima facie showing that they were the records of James Capotorto's account with the Shell Oil Company. The Appellant is not questioning the fact that the records were the records of the Shell Oil Company; rather, he challenges the propriety of any permissible inference that the records are the records of his account, if any, with the Shell Oil Company.

The witness Maggio had nothing to do with the compilation or preparation of these records. He testified that he had received these records from the Shell record center in Tulsa, Oklahoma by mail and he was simply bringing them to Court. Even though a signature card would have to be filled out to get a credit card, no check of this card apparently had been made to authenticate either the signature on the slips or the account number.

There was testimony in the record that the Appellant traveled from Florida to New York and back again, but there was no testimony as to how these trips were paid for. The record is devoid of any proof to authenticate these records, Government exhibit 118, as being the records of the account of James Capotorto with the Shell Oil Company. United States v. Tellier, Supra, 255 F2d at 448.

The admission into evidence of these records was error and the judgment of conviction should be reversed.

POINT VI

PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLATE PROCEDURE, APPELLANT CAPOTORTO HEREBY ADOPTS BY REFERENCE THE POINTS AND ARGUMENTS OF THE OTHER APPELLANTS INSOFAR AS THEY MAY HAVE APPLICATION TO THE APPELLANT CAPOTORTO.

CONCLUSION

FOR THE ABOVE STATED REASONS, THE JUDGMENT BELOW SHOULD BE REVERSED AND THE CASE REMANDED TO THE DISTRICT COURT WITH A DIRECTION THAT THE INDICTMENT BE DISMISSED AS TO THE APPELLANT, OR IN THE ALTERNATIVE THAT THE APPELLANT BE GRANTED A NEW TRIAL.

Respectfully submitted,

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U.S. v Corallyzo - Epstein

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 2 day of June, 1975 at No. 1 Courthouse Sq N.Y.C. deponent served the within Brief upon M. Lattomers the appellee herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 2 day of June 1975

Edward Bailey

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1973